



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

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Pacific Bell Telephone Company d/b/a
AT&T California,

Complainant,

vs.

Cbeyond Communications, LLC
(U 6446 C), Covad Communications
Company (U 5752 C), and Arrival
Communications (U 5248 C),

Defendants.

Case No. 06-03-023
(Amended Complaint Filed
March 27, 2006)

**MOTION TO INTERVENE BY
CALIFORNIA ASSOCIATION OF COMPETITIVE
TELEPHONE COMPANIES**

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August 1, 2006

I. INTRODUCTION

The California Association of Competitive Telephone Companies (“CALTEL”), on behalf of its members,¹ hereby submits this motion to intervene as an interested party in the above-captioned proceeding. This motion to intervene is submitted pursuant to Rule 1.4 of the Commission’s Rules of Practice and Procedure (adopted July 20, 2006).

CALTEL seeks to intervene in this case for a single reason. A number of CALTEL’s members are CLECs who either previously purchased, currently purchase, or may wish to purchase services out of one or more of the wire centers claimed by complainant Pacific Bell Telephone Company d/b/a AT&T California (“AT&T”) in this case to be “non-impaired.” Although the TRRO amendment at issue in this matter states (in Section 4.1.2) that any decision by the Commission finding a wire-center to be “non-impaired” shall be binding on all CLECs, it does not make a clear statement about what happens if the Commission makes a finding to the contrary, i.e., that a wire center is “impaired.”

The defendants in this case argue that the wire centers identified by AT&T are impaired. CALTEL and its other members are in accord with these arguments. More importantly, although other members of CALTEL did not self-certify in these offices,

¹ The following companies are members of CALTEL:

A+ Wireless / Advantage Wireless; Access One, Inc.; Arrival Communications Inc.; BullsEye Telecom; Call America; Cbeyond Communications; CCT Telecommunications, Inc.; CommPartners; Covad Communications; Creative Interconnect; Edison Carrier Solutions; Fones4All Corp.; ITS, Inc.; Level 3 Communications; McGraw Communications, Inc.; Mpower Communications Corp.; NewEdge Networks; nii communications, Ltd.; North County Communications Corp.; O1 Telephone Communications; Pac-West Telecomm, Inc.; PAETEC Communications, Inc.; Sage Telecom; TCAST Communications, Inc.; Telekenex; U.S. TelePacific Corp.; Telscape Communications; The Telephone Connection; TMC Communications; Trinsic Communications; Utility Telephone; and XO Communications Services.

Because they are already involved in this case, CALTEL excludes from this filing the following of its members: defendants Cbeyond Communications, Covad Communications Company and Arrival Communications, Inc. and intervenors XO Communications Services, U.S. TelePacific Corp. and Mpower Communications Corp.

they have a clear interest in determining if the Commission ultimately agrees with them. Therefore, CALTEL seeks to intervene in this proceeding for the sole purpose of obtaining from the Commission an order that any finding that a wire center is “impaired,” as sought by the defendants, shall be binding on AT&T with respect to all CLECs, regardless of whether or not any such CLEC is a party to this proceeding. The order should further state that CLECs do not need to do anything to avail themselves of a finding that a wire center is “impaired.” Such an outcome is fair and reasonable and will satisfy the Commission’s stated intent not to hold continuous, repetitive arbitrations of the same issue.

CALTEL has been authorized by AT&T to inform the Commission that AT&T does not object to CALTEL’s motion to intervene in order to seek the relief identified here.

II. DISCUSSION

CALTEL’S motion to intervene is prompted by an ambiguity in the TRRO amendment ordered in D. 06-01-043 and signed by a number of CALTEL’s members. Although there are a handful of CLECs involved in this proceeding, a decision by the Commission on the “impairment” status of the wire centers identified by AT&T in its complaint has the potential to affect a far greater number of CLECs, including a number of CALTEL’s members.

The complaint in this proceeding has, with respect to each identified wire centers, two possible outcomes:

- (1) a finding of “non-impairment,” as requested by AT&T, or
- (2) a finding of “impairment,” as requested by the CLECs in the case.

The former result appears to be covered by the TRRO amendment, so CALTEL is not concerned with that situation. However, it is not clear if the latter is covered, and that is therefore the basis of CALTEL's motion to intervene.

If there is a finding of non-impairment, it appears that the CLEC industry would be governed by Section 4.1.2 of the TRRO amendment, which reads as follows:

- 4.1.2 If the Commission has previously determined, in any proceeding, even if CLEC was not a party to that proceeding where appropriate notice has been provided to the CLEC and where CLEC has the opportunity to participate, that a wire center is properly designated as a wire center meeting the thresholds set forth in Sections 0.1.6, 0.1.7 or 0.1.8, then CLEC shall not request DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements declassified by the non-impairment status of the wire center in such wire center.

Since AT&T sent notice of the complaint here via Accessible Letter and CLECs had the opportunity to participate, they are bound by a finding of "non-impairment" (which is the finding of Sections 0.1.6, 0.1.7 or 0.1.8), as set forth in Section 4.1.2.

Unfortunately, there is not a directly comparable provision in the TRRO amendment with respect to a finding of "impairment." Thus, as a highly technical matter, it could be that AT&T might lose its "non-impairment" claim here with respect to one or more wire centers and then try to contend that the finding of "impairment" only applied to CLECs who were actual parties to the case, either as defendants or intervenors. While AT&T may not do so (and CALTEL would favor a stipulation from AT&T that that is the case), CALTEL feels the need to intervene to protect against such a result.

Section 4.1.3 of the TRRO amendment expressly permits the type of intervention sought here:

- 4.1.3 AT&T will notify all other CLECs of the filing of such a dispute via Accessible Letter, which Accessible Letter will include the case number. If

the self-certification dispute is filed with the Commission for resolution, the Parties will not oppose requests for intervention by other CLECs if such request is related to the disputed wire center designation(s). . . .

This section allows CLECs who are notified of the proceeding to intervene if their request is related to the disputed wire center designations. CALTEL seeks to intervene for its members on that basis.²

The sole relief sought here by CALTEL is consistent with the Commission's position in adopting the TRRO amendment. In its decision approving the TRRO amendment, the Commission stated the following with respect to future litigation:

*We reiterate the September 23, 2005 Ruling by the Administrative Law Judge (ALJ) that any carrier with an interconnection agreement with SBC that has a dispute over the change-of-law provisions related to the FCC's TRO and TRRO orders will be subject to the outcome of this proceeding. The Commission does not intend to conduct individual arbitrations to implement change-of-law provisions relating to the two FCC orders. SBC was required to send a copy of the Ruling to each carrier with whom it has an interconnection agreement so that any carrier that wanted to could take an active role in the proceeding.*³

The Commission plainly stated there that it was not going to hold repeated arbitrations over change-of-law provisions. The exact same rule should apply here – a determination in this proceeding regarding “impairment” or “non-impairment” should be final and binding on the entire industry. There is simply no need to hold repeated dispute resolution proceedings with respect to wire center “impairment” determinations.

CALTEL is concerned that AT&T might decline to apply a determination in this proceeding to CLECs who are not parties to the case and who have not previously self-

² The fact that CALTEL is an organization representing CLECs, rather than a CLEC itself, should be of no matter. Issues such as the one raised here are exactly of the type that are too expensive and too frequent for small, individual CLECs to retain their own counsel and participate on their own. That is the purpose for which CALTEL was formed, and the Commission has long recognized CALTEL's ability to represent its members in Commission proceedings.

³ D. 06-01-043, p. 3 (emphasis added).

certified in the offices in question. This is particularly a concern given the lack of clarity in the TRRO amendment regarding findings of “impairment.” Accordingly, CALTEL seeks to intervene to make certain that any decision in this proceeding finding “impairment” will apply to the entire CLEC industry and will further state that CLECs do not need to do anything to avail themselves of a finding that a wire center is “impaired.”

III. CONCLUSION

For the foregoing reasons, CALTEL requests that its motion to intervene be granted so that CALTEL may seek from the Commission an order that any finding that a wire center is “impaired” shall be binding on AT&T with respect to all CLECs, regardless of whether or not any such CLEC is a party to this proceeding. Such an order should further state that CLECs do not need to do anything to avail themselves of a finding that a wire center is “impaired.”

Dated: August 1, 2006

Respectfully submitted,

**California Association of Competitive
Telephone Companies**

A handwritten signature in black ink, appearing to read "J.S. Faber", with a stylized flourish at the end.

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CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for which an electronic mail address has been provided, this day served a true copy of the original attached **MOTION TO INTERVENE BY THE CALIFORNIA ASSOCIATION OF COMPETITIVE TELEPHONE COMPANIES** on all parties of record in this proceeding or their attorneys of record.

Dated August 1, 2006 at Lafayette, California.

A handwritten signature in blue ink, appearing to read "J.S. Faber", with a stylized flourish at the end.

Joseph S. Faber

Served by electronic mail as follows:

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[proposed]

**ORDER GRANTING MOTION TO INTERVENE BY
CALIFORNIA ASSOCIATION OF
COMPETITIVE TELEPHONE COMPANIES**

On July 31, 2006, the California Association of Telephone Companies (“CALTEL”) filed a motion to intervene in the above-captioned proceeding and to appear and participate as an interested party. Complainant Pacific Bell Telephone Company d/b/a AT&T California stated that it would not oppose the Motion.

CALTEL has a direct and tangible interest in the outcome of this proceeding and should be allowed to participate to protect the interests of its members.

Good cause appearing, the motion to intervene should be, and hereby is,
GRANTED.

Dated: _____, 2006, at San Francisco, CA.

Administrative Law Judge